IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5697 of 2007()

AGAINST THE ORDER IN LP.17/06 IN CC.217/2003 of J.M.F.C.-I, PERINTHALMANNA

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(CRIME NO.29 OF 2003 OF KOLATHUR POLICE STATION)

PETITIONER:FIRST ACCUSED:

KUNHAMU,S/O.IBRAHIM,PALAPURATH KOTTETH HOUSE,PANG DESOM,PERINTALMANNA TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENT: COMPLAINANT:

STATE OF KERALA THROUGH SUB INSPECTOR KOLATHUR REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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B.A.No.5697 of 2007

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Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under sections 447 and 324 IPC. Consequent to non-appearance of the petitioner, the learned Magistrate has issued coercive processes against the petitioner. The coercive processes issued by the learned Magistrate is chasing him. The case has been transferred to the list of long pending cases. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was not wilful and on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and seek bail. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under

section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner. The learned Public Prosecutor opposes the application. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the

same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj